
**SETTLEMENT AGREEMENT BETWEEN
THE MISSOURI BOARD OF PHARMACY
AND
DHI Inc. d/b/a ST. CHARLES REXALL DRUG CO.**

**Permit No. 5065
AHC Case No. 10-1651 PH**

Comes now St. Charles Rexall Drug Co. ("Licensee or permit holder") and the Missouri Board of Pharmacy ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's pharmacy permit will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 2000, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000.

The Permit Holder acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on its own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time the Permit

Holder may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's permit. Being aware of these rights provided to Permit Holder by operation of law, the Permit Holder knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to the Permit Holder.

The Permit Holder acknowledges that it has received a copy of the Complaint, the investigative report and other documents relied upon by the Board in determining there was cause to discipline Licensee's permit, along with citations to the law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's permit to operate a pharmacy in the state of Missouri, numbered 5065 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, as amended and Chapter 338, RSMo.

JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW

1. The Board is an agency of the State of Missouri created and established pursuant to Section 338.110, RSMo, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo and the accompanying regulations.

2. Jurisdiction and venue are proper pursuant to sections 621.045, RSMo and 338.055.2, RSMo.

3. Respondent, DHI Inc. d/b/a St. Charles Rexall Drug Co. ("Rexall" or "the Pharmacy"), located at 550 First Capitol Drive, St. Charles, Missouri, held permit no. 5065 to operate a pharmacy in the state of Missouri.

4. The Pharmacy's permit was current and active at all times relevant herein.

5. The Pharmacy is owned by DHI, Inc.

6. Daniel J. Hollaway serves as the president of DHI, Inc. and the permit holder for the Pharmacy.

7. At all times relevant herein, Rexall was engaged in the practice of pharmacy as defined in section 338.010.1, RSMo which states in pertinent part:

338.010. 1. The "practice of pharmacy" means the interpretation, implementation, and evaluation of medical prescription orders, including receipt, transmission, or handling of such orders or facilitating the dispensing of such orders; the designing, initiating, implementing, and monitoring of a medication therapeutic plan as defined by the prescription order so long as the prescription order is specific to each patient for care by a specific pharmacist; the compounding, dispensing, labeling, and administration of drugs and devices pursuant to medical prescription orders and administration of viral influenza vaccines by written protocol authorized by a physician for persons twelve years of age or older as authorized by rule; the participation in drug selection according to state law and participation in drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records thereof; consultation with patients and other health care practitioners about the safe and effective use of drugs and devices; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management and control of a pharmacy This chapter shall not be construed to prohibit the use of auxiliary personnel under the direct supervision of a pharmacist from assisting the pharmacist in any of his duties. This assistance in no way is intended to relieve the pharmacist from his responsibilities for compliance with this chapter and he will be responsible for the actions of the auxiliary personnel acting in his

assistance

8. At all times relevant herein, Rexall, its employees and agents, had a duty to comply with Board statute 338.250, RSMo which states:

338.250 Any pharmacy that receives or possesses drugs or devices shall be held responsible for compliance with all laws within this chapter as well as state and federal drug laws on all drugs received or possessed, including but not limited to drugs and devices received or possessed pursuant to a consignment arrangement.

9. At all times relevant herein, Rexall, its employees and agents, had a duty to comply with Board regulation 20 CSR 2220-2.010(1)(H) and (O) which states:

(H) Pharmacies must maintain adequate security in order to deter theft of drugs by personnel or the public. Sufficient alarm systems or locking mechanisms must be in place if the pharmacy is located in a facility into which the public has access and the pharmacy's hours of operation are different from those of the remainder of the facility.

* * * *

(O) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

* * * *

10. At all times relevant herein, Rexall, its employees and agents, had a duty to comply with state regulation 19 CSR 30-1.034, which states:

(1) Physical Security

(A) Controlled substances listed in Schedules I and II shall be stored in a securely locked, substantially constructed cabinet.

(B) Controlled substances listed in Schedules III, IV and V shall be stored in a securely locked, substantially constructed cabinet. However, pharmacies may disperse these substances throughout the stock of noncontrolled substances in such a manner as to obstruct the theft or diversion of the controlled substances.

Misappropriation by Employee Hollaway

11. Paragraphs 1 through 10 are incorporated by reference as though fully set forth herein.

12. At the time of the events alleged herein, Daniel J. Hollaway served as the pharmacist-in-charge for the Pharmacy.

13. The Pharmacy was registered by the Missouri Department of Health and Senior Services, Bureau of Narcotics and Dangerous Drugs (BNDD) to purchase, stock and distribute controlled substances, Registration No. 414.

14. The Pharmacy's BNDD Registration was current and active until surrendered on May 5, 2008.

DX 15. Beginning in ²⁰⁰⁶~~2008~~, over 148,000 dosage units of controlled and non-controlled substances were either lost or misappropriated from the Pharmacy.

16. The Pharmacy did not have adequate security to detect and prevent drug diversion in violation of Missouri regulations 19 CSR 30-1.031 (1), (2), 19 CSR 30-1.034.1(B) and 20 CSR 2220-2.010 (1) (H), (O).

17. The Pharmacy failed to maintain accurate controlled substance records in violation of section 195.050.6, RSMo and 19 CSR 30-1.044(1).

18. The Pharmacy dispensed controlled substances in the absence of a valid

prescription in violation of section 195.060.1, RSMo and 19 CSR 30-1.066.

19. The Pharmacy dispensed controlled substances in violation of 195.030.3, RSMo and 195.252.1(1), (2), RSMo.

20. The Pharmacy's failure to maintain adequate security in order to deter theft of drugs by personnel or the public and its failure to monitor controlled substances in its inventory constitutes a violation of Chapter 195, and Board statute 338.055.2(5), (6), (13) and (15), RSMo.

21. The Pharmacy's conduct as alleged herein constitutes incompetency, misconduct, gross negligence, misrepresentation or dishonesty in the performance of its functions and/or duties as a licensed Pharmacy in the state of Missouri.

22. At the time of the events alleged herein, the Pharmacy had formed a relationship of professional trust and confidence with its clients in that its clients relied upon the Pharmacy to ensure that all applicable state and federal laws and regulations regarding the safe and secure handling of drugs and the practice of pharmacy were followed.

23. The Pharmacy violated its clients' professional trust and confidence.

24. The Pharmacy's failure to keep an accurate drug inventory constitutes violations of Section 338.100, RSMo, 21 U.S.C. § 827 and 21 CFR 1304.21(a).

25. Cause exists for Petitioner to take disciplinary against Respondent's permit under Section 338.285, RSMo, which states:

The board is hereby authorized and empowered, when

examination or inspection of a pharmacy shall disclose to the board that the pharmacy is not being operated or conducted according to such legal rules and regulations and the laws of Missouri with respect thereto, to cause a complaint to be filed before the administrative hearing commission pursuant to chapter 621, RSMo, charging the holder of a permit to operate a pharmacy with conduct constituting grounds for discipline in accordance with section 338.055.

26. Cause exists for Petitioner to take disciplinary action against Respondent's permit pursuant to Board regulation 20 CSR 2220-2.010(1)(N) which states:

(N) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

27. Cause exists for Petitioner to take disciplinary action against Respondent's permit under Section 338.055(5), (6), (13) and (15), RSMo, which states in pertinent parts:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this

chapter:

* * *

(13) Violation of any professional trust or confidence;

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, as amended.

1. Licensee's permit to operate a pharmacy in the State of Missouri, Permit No. 5065 is hereby **VOLUNTARILY SURRENDERED**.

2. The parties to this Agreement understand that the Board of Pharmacy will maintain this settlement agreement as an open and public record of the Board as provided in Chapters 324, 338, and 610, RSMo.

3. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

4. Licensee, together with its heirs and assigns, and its attorney(s), do hereby waive, release, acquit, and forever discharge the Board, its respective members and any of

its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof void or unenforceable.

5. Licensee understands that it may, either at the time the settlement agreement is signed by all parties, or within fifteen (15) days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit its request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

6. If Licensee requests review, this settlement agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the settlement agreement sets forth cause for disciplining Licensee's license. If Licensee

does not request review by the Administrative Hearing Commission, the settlement agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

ST. CHARLES REXALL DRUG CO.

Daniel T Hallaway
BY:
TITLE: *President P.E.C.*
Permit No. 040431

Date 8-25-2011

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